

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3	IN THE MATTER OF)	
4	JOHN E. KAMSTRA DAIRY,)	
)	
5	Appellant,)	PCHB No. 82-19
)	
6	v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
7	STATE OF WASHINGTON,)	AND ORDER
	DEPARTMENT OF ECOLOGY,)	
)	
8	Respondent.)	
9	_____)	

10 THIS MATTER, the appeal from the issuance of a \$5000 civil penalty
11 for alleged violation of RCW 90.48.080, having come on regularly for
12 formal hearing on July 7, 1982, in Lacey, and appellant represented by
13 his attorney, Bryce H. Dille and respondent represented by its attorney
14 Charles K. Douthwaite, Assistant Attorney General, with William A.
15 Harrison, Administrative Law Judge, presiding, and having reviewed the
16 Proposed Order of the presiding officer mailed to the parties on the
17 29th day of September, 1982, and more than twenty days having elapsed
18 from said service; and

1 The Board having received no exceptions to said Proposed Order
2 and the Board being fully advised in the premises; NOW THEREFORE,
3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
4 Order containing Findings of Fact, Conclusions of Law and Order dated
5 the 29th day of September, 1982, and incorporated by reference herein
6 and attached hereto as Exhibit A, are adopted and hereby entered as
7 the Board's Final Findings of Fact, Conclusions of Law and Order herein.

8 DATED this 1st day of ~~October~~ ^{NOVEMBER}, 1982.

9 POLLUTION CONTROL HEARINGS BOARD

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12 GAYLE ROTHROCK, Chairman

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15 DAVID AKANA, Lawyer Member

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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JOHN E. KAMSTRA DAIRY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 82-19

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$5000 civil penalty for alleged violation of RCW 90.48.080, came on for hearing before the Pollution Control Hearings Board, on July 7, 1982. William A. Harrison, Administrative Law Judge, presided alone. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by his attorney, Bryce H. Dille. Respondent appeared by Charles K. Douthwaite, Assistant Attorney General. Reporter Kim Otis recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From

EXHIBIT A

1 testimony heard and exhibits examined, the Pollution Control Hearings
2 Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant, John E. Kamstra, owns a dairy farm in Eatonville. His
6 herd consists of 325 holstein cows. At the time in question, manure
7 from the barn floor was scraped into a 36,000 gallon round tank and
8 mixed with water to form a concentrated slurry. This, in turn, was
9 regularly transported by pipeline to appellant's fields. After
10 application to the fields, water was applied to the manure to further
11 dilute it.

12 II

13 On July 27, 1981, manure concentrate lay upon appellant's field
14 some 30 to 40 feet from the southwest corner of his field. Appellant
15 asked his son to apply water to it with a "spray gun" attached to the
16 pipeline. Appellant's son started the spray gun which automatically
17 applied the water. The water was not turned off for some four hours.
18 During this time, ponding of manure water occurred on appellant's
19 field. From ponds there, the manure water flowed into a field ditch
20 of appellant's neighbor which commenced at the southwest corner of
21 appellant's field. From there the manure water flowed into a
22 tributary and finally into South Creek.

1. Near complainant's home: 1.9 ppm
2. One half mile downstream of
3. complainant's home: 2.8 ppm
4. One quarter mile further
5. downstream: 6.0 ppm

6 A minimum level of dissolved oxygen to support fish in South Creek is
7 5 ppm. Electroshocking of South Creek revealed no fish in it for
8 nearly a mile downstream of where the manure effluent entered South
9 Creek, in contrast to turning up fish upstream of the effluent's
10 entry. Appellant's manure effluent killed fish in South Creek.

11 V

12 Appellant previously violated the same statutory prohibition
13 against water pollution, RCW 90.48.080 with which he is now charged.
14 This violation was affirmed in our PCHB No. 80-194 entered on June 26,
15 1981, approximately one month before the facts of this case. A
16 portion (\$1000) of the civil penalty in that prior case was suspended
17 on condition that appellant not violate any provision of chapter
18 90.18 RCW for a period of two years from our Order of June 26, 1981.

19 VI

20 On September 24, 1981, DOE issued a Notice of Violation calling
21 for submission of a report from appellant stating, among other things,
22 a timetable for a new waste handling system at his dairy farm. This
23 Notice of Violation was issued pursuant to RCW 90.48.120(1) (an

III

On July 28, 1982, appellant's neighbor complained to respondent, Department of Ecology (DOE). The DOE investigator observed a small flow of manure water from appellant's field into the field ditch. This brown effluent was further traced to South Creek. In that portion of South Creek in front of the complainant's home the water was brown and foamy. It smelled of manure. This condition persisted for nearly a mile downstream from the place where effluent entered South Creek. A sample of South Creek water near complainant's home revealed a fecal coliform count of 3,800,000 col./100 ml. resulting from appellant's discharge. Fecal coliform indicates presence of manure and the count typical for streams in a rural area is 300 col./100 ml. The water upstream from the effluent's entry was clear, and sampling there showed a fecal coliform count of 300 col./100 ml.

IV

On July 29, 1982, DOE investigators for DOE discovered dead fish in South Creek near complainant's home (stickleback and juvenile sea run cutthroat). These exhibited the flared gills of fish which died for lack of oxygen. Manure has a high biological oxygen demand which takes oxygen from water depriving aquatic life of it. At stations downstream of where the manure effluent entered South Creek the dissolved oxygen readings were:

1 unappealable order). In November, 1981, appellant began a new waste
2 handling system. This system (hereafter the November, 1981 system)
3 consists of separating solid manure, through use of a settling lagoon,
4 and hauling it away from the dairy farm. The remaining dilute liquid
5 manure is then sprayed only twice per year in contrast to the former
6 practice of regularly spraying concentrated manure. This system was
7 installed at a cost to appellant of \$50,000. Appellant never reported
8 this November, 1981, system to DOE. He agreed at this hearing to do
9 so.

10 VII

11 Also on September 24, 1981, DOE issued a Notice of Penalty to
12 appellant assessing a civil penalty of \$5000. From this appellant
13 appeals.

14 VIII

15 Any Conclusion of Law which should be deemed a Finding of Fact is
16 hereby adopted as such.

17 From these Findings the Board comes to these

18 CONCLUSIONS OF LAW

19 I

20 Appellant unlawfully caused, permitted or suffered a discharge of
21 organic matter (manure effluent) that tended to cause and caused
22 pollution to water of this state in violation of RCW 90.48.020. Such
23 pollution was as defined at RCW 90.48.120 in that appellant's manure
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1 effluent entered South Creek and its tributary, waters of this state,
2 changing their color taste, turbidity and odor rendering such waters
3 harmful to fish, at the very least, and also creating a substantial
4 nuisance.

5 II

6 Having violated chapter 90.48 RCW within two years of our Order in
7 PCHB No. 80-194, appellant is now liable for the \$1000 suspended then
8 on condition of no such violations in that time period.

9 III

10 The long term goals of the Water Pollution Control Act, chapter
11 90.43 RCW, were well served when appellant replaced, at substantial
12 expense, the manure disposal system which led to this violation with
13 his November, 1981, system to haul manure. For this reason, the civil
14 penalty imposed by DOE, (whom appellant did not notify about the new
15 system) should be mitigated. Appellant should file a written report
16 with DOE describing fully the November, 1981, system for manure
17 disposal which he now uses.

18 IV

19 An Finding of Fact which should be deemed a Conclusion of Law is
20 hereby adopted as such:

21 From these Conclusions, the Board enters this
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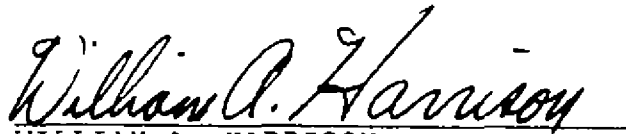
ORDER

The violation of RCW 90.48.080 is affirmed. The \$5000 civil penalty is also affirmed, provided that \$3000 thereof is suspended on condition that 1) appellant not violate any provision of chapter 90.48 RCW for a period of five years from the date that this Order becomes final and 2) that on or before 30 days after this Order becomes final appellant shall file with Department of Ecology a written report fully describing the November, 1981, system for manure disposal which he now uses, as he now operates it.

Respondent, John E. Kamstra Dairy, shall also pay \$1000 previously suspended in our PCHB No. 80-194 and now due as a result of this violation.

DONE at Lacey, Washington this 29th day of September, 1982.

POLLUTION CONTROL HEARINGS BOARD


WILLIAM A. HARRISON
Administrative Law Judge

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JOHN E. KAMSTRA DAIRY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB Nos. 84-323 and 82-19

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the request for reinstatement of a \$3,000 suspended civil penalty imposed by final order on PCHB No. 82-19 for allowing a manure discharge into waters of the state, came on for formal hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Wick Dufford, and Gayle Rothrock (presiding) on August 5, 1985, at Lacey, Washington. Kim Otis, court reporter, recorded the proceedings.

Appellant Kamstra Dairy appeared and was represented by Bryce Dille, attorney. Respondent Department of Ecology appeared and was represented by Charles K. Douthwaite, Assistant Attorney General.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence, and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant John E. Kamstra and family own a 93-acre dairy farm near
7 Eatonville. His herd consists of 325-350 Holstein cows. Two hundred
8 seventy-five are milking at any one time. Disposal of cattle waste
9 occurs by hauling away solids and lagooning and diluting the remainder
10 to apply to fields for their fertilization. This manure slurry is
11 transported by PVC and aluminum pipeline to appellant's fields and
12 spray-applied as weather and field conditions permit.

13 II

14 While there were problems in 1980 and 1981 with manure slurry
15 leaving the property and entering a roadside ditch which, in turn,
16 enters South Creek, there was an abatement of that circumstance for
17 some two and one-half years after a more sophisticated manure system
18 was installed at the dairy farm.

19 In the summer of 1984, the manure contamination of waters occurred
20 again, by accident or oversight, and a complaint call was telephoned
21 to the Washington State Department of Ecology in late July.

22 III

23 On July 27, 1984, a DOE inspector arrived at the Kapowsin Highway
24 (304th Avenue) edge of the dairy farm and noted brownish, cloudy fecal
25 material in the roadside ditch and took several photographs. There

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-323 & 82-19

1 exists a lush growth of reed canary grass in the ditch at all points
2 where it is not culverted underground. The same brown color and
3 cloudy character of liquid was seen and noted by the inspector where
4 the Kamstra field ditch runs into the roadside ditch. What appeared
5 to be manure slurry overspray was visible on the road near the ditch
6 on Kapowsin Highway. Evidence of drying slurried manure was on the
7 Kamstra spray fields. It was not raining that day and had rained
8 little in recent weeks. The clouded water was barely flowing in the
9 ditch.

10 IV

11 Three samples of creek water were taken that day; a control sample
12 upstream above Kapowsin Highway, a "dirty water" sample where the
13 roadside ditch intersects South Creek, and a less-cloudy sample one
14 mile downstream where the creek crosses 320th Avenue. The inspector
15 noted no other dairies were in the immediate vicinity. Apparently,
16 there are as many as three dairies upstream about one-half mile or
17 more distant.

18 V

19 Appellant family foreman Johnny Kamstra personally oversees the
20 slurry spraying on the farm. It was his recollection that he set the
21 sprayer July 24 or 25 to spray one and one-half inches per acre for
22 one and one-half hours. He recalled spraying the fields then for the
23 first time since April. The ground would have been drier and harder
24 in July than in April. He also stated it was not physically possible
25 for manure to be sprayed into the Kamstra field ditch with the

1 configuration he was using. He testified to the existence of pipes
2 from other farms discharging to the roadside ditch which were not
3 detected by DOE's inspections. He theorized that the manure might
4 have come from one of these sources, not as drainage off hard dry
5 ground.

6 VI

7 Laboratory tests revealed high counts of ammonia, phosphorus, and
8 solids in samples number two and three. There was a dramatic
9 difference between counts for samples one and two. Sample one results
10 were within state standards. There was a drop in the count of
11 offending, contaminating substances for sample three but key
12 troublemarkers, e.g., ammonia, phosphorus and solids, were still
13 higher than the standards for Class A waters.

14 VII

15 A resource damage specialist visited the site on July 31 after a
16 report of a fish kill on July 29 at South Creek near 320th Avenue.
17 The specialist used visual observation to note mortalities in
18 stickleback, catfish, sunfish, and some searun cutthroat trout. He
19 examined, through reconnaissance, an extensive area along the north and
20 south forks of South Creek. His attention was attracted to the smell
21 and sight of cow manure discharge in water in the Kapowsin Highway
22 ditch where he detected flow into the creek. He also observed
23 discolored liquid in the Kamstra field ditch and verified a flow from
24 that ditch into the roadside ditch. In examining concrete control
25 boxes, piping, and the roadside ditch itself, he was unable to

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-323 & 82-19

1 determine any source other than Kamstra dairy farm for the cow manure.

2 VIII

3 An assessment was made of these developments by DOE, including
4 resource damage and prior violations, and the agency on October 17,
5 1984, issued notice that the reimposition of a suspended \$3,000 on an
6 earlier \$5,000 penalty was a necessary action. Respondent Kamstra
7 differed with that view, denied the allegation by DOE regarding the
8 new pollution event, and both sides found themselves party to an
9 appeal before this Board through written notices received on October
10 30 and November 13, 1984.

11 IX

12 The evidence is unclear as to how manure got into the ditch
13 network which connects the Kamstra farm with South Creek. Appellant's
14 foreman says the field spraying system could not be the source. But
15 credible eyewitnesses testified that manure-laden water was exiting
16 the Kamstra property. Regardless of the means by which the entry of
17 manure occurred, the preponderance of evidence is that it originated
18 from the Kamstra dairy.

19 X

20 Any Conclusion of Law which is deemed a Finding of Fact is hereby
21 adopted as such.

22 From these Facts the Board comes to these

23 CONCLUSIONS OF LAW *

24 I

25 The Board has jurisdiction over these persons and these matters.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-323 & 82-19

1 Chapters 43.21B and 90.48 RCW.

2 II

3 On July 27 and 31, 1984, appellant dairy farm unlawfully caused or
4 permitted discharge of pollutants into public waters (South Creek) in
5 violation of chapter 90.48.080 RCW. On November 2, 1982, this Board
6 suspended a portion of a civil penalty, under PCHB No. 82-19, Kamstra
7 Dairy v. DOE.

8 Having violated RCW 90.48 within five years of the final order
9 date of PCHB No. 82-19, appellant is now liable for the \$3,000
10 suspended then on condition of no further violations in that time
11 period.

12 III

13 The long-term goals of soils and groundwater protection and of the
14 Water Pollution Control Act are well served when livestock-handling
15 farms update and operate correctly their manure disposal systems.
16 Modern manure handling systems should be installed not only at dairies
17 in the Eatonville-Graham area but at farms and ranches throughout the
18 state. The state Legislature and citizenry have placed a very high
19 priority on control of both point and non-point sources of ground and
20 surface water pollution.

21 Some miscalculation in the operation of this good modern system
22 caused all or part of the manure flow into South Creek, not the lack
23 of a modern system itself. DOE could have but did not elect to impose
24 a new citation and civil penalty.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-323 & 82-19

IV

A new, separate regulatory order or enforcement order and civil penalty, appealable to this Board, would necessarily be considered likely in the future were this appellant or any other farmer handling livestock to be found in violation of chapter 90.48 RCW.

V

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Conclusions the Board enters this

ORDER


The \$3,000 suspended penalty allowed under terms of PCHB No. 82-19 is reimposed and is due and payable.

DONE this 28th day of August, 1985.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman

 8/27/85
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member